

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

AEVOE CORP.,

Plaintiff(s),

vs.

AE TECH. CO., et al.,

Defendant(s).

Case No. 2:12-cv-00053-GMN-NJK

ORDER

(Docket No. 376)

Pending before the Court is Defendant AE Tech's motion to seal an exhibit under seal. Docket No. 376. Pursuant to the procedure outlined by the Court, *see* Docket No. 334, Plaintiff has submitted a declaration in support of the motion to seal. Docket No. 378. For the reasons discussed more fully below, the Court finds the declaration submitted by Plaintiff to be insufficient to warrant sealing. The exhibit shall remain under seal for the time being. However, no later than October 25, 2013, Plaintiff shall submit a supplemental brief analyzing the relevant standards discussed below, as well as such further evidentiary support as is necessary pursuant to those standards. The failure to do so will result in the Court making the exhibit publicly available.

The Ninth Circuit has held that there is a strong presumption of public access to judicial records. *See Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006); *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003). A party seeking to file documents under seal bears the burden of overcoming that presumption. *Pintos v. Pac. Creditors Ass'n*, 605 F.3d 665, 678 (9th Cir. 2010) (quoting *Kamakana*, 447 F.3d at 1178). Parties "who seek

1 to maintain the secrecy of documents attached to dispositive motions must meet the high threshold
 2 of showing that ‘compelling reasons’ support secrecy.” *Kamakana*, 447 F.3d at 1180.¹ Those
 3 compelling reasons must outweigh the competing interests of the public in having access to the
 4 judicial records and understanding the judicial process. *Id.* at 1178-79; *see also Pintos*, 605 F.3d at
 5 679 & n.6 (court must weigh “relevant factors,” including the public’s interest in understanding the
 6 judicial process). The Ninth Circuit has indicated that “‘compelling reasons’ sufficient to outweigh
 7 the public’s interest in disclosure and justify sealing court records exist when such ‘court files might
 8 have become a vehicle for improper purposes,’ such as the use of records to . . . release trade
 9 secrets.” *Kamakana*, 447 F.3d at 1179.

10 The document at issue in the pending motion to seal is Exhibit 6 to the reply brief filed by
 11 AE Tech in support of its motion to dismiss. *See* Docket Nos. 375, 377. The exhibit consists of a
 12 copy of the employment agreement of Aevoe Corp. employee Michael Leonhard. *See* Docket No.
 13 377; *see also* Docket No. 378 at ¶ 2. In support of the motion to seal, Plaintiff submitted the
 14 declaration of Jonathan Lin stating that:

15 Aevoe does not make that employment agreement and other similar contracts
 16 publicly available and treats such an employment contract, including the contractual
 17 terms and conditions, as sensitive business information. Aevoe designated the
 18 information as highly confidential in order to prevent the disclosure of such a contact
 19 [sic] with one of its top executives from competitors such as the defendants in this
 20 lawsuit.

21 Docket No. 378 at 2.

22 The Court is unable to conclude based on this showing alone that there is compelling reason
 23 for keeping the employment agreement secret.² Instead, as noted above, no later than October 25,
 24 2013, Plaintiff shall submit a supplemental brief analyzing the relevant standards discussed below,

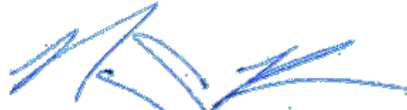
25 ¹ *Kamakana* and *Foltz* involve non-parties’ attempts to obtain sealed court documents. The
 26 same analysis and standards apply to a party’s motion to seal. *See Pintos*, 605 F.3d at 679 n.5; *see also*
 27 *Kamakana*, 447 F.3d at 1182 n.9 (for the case before it, noting that “[t]he effective bottom line is that
 28 the district court was determining whether documents should be sealed”).

² As a threshold matter, the Ninth Circuit has made clear that the designation of a document as
 confidential under a stipulated protective order is insufficient to justify sealing that document. *See, e.g.,*
Vaccine Ctr. LLC v. GlaxoSmithKline LLC, 2013 U.S. Dist. Lexis 68298, *12-13 (D. Nev. May 14,
 2013) (discussing *Foltz* and *Kamakana* on this issue regarding the “compelling reasons” standard).

1 as well as such further evidentiary support as is necessary pursuant to those standards.

2 IT IS SO ORDERED.

3 DATED: October 18, 2013



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5 NANCY J. KOPPE
United States Magistrate Judge